Any agreement canceling the principal obligation cancels the surety's obligation. *Whitcher* v. *Hall*, 5 B. & C. 269. Though the principal obligation is preserved, an agreement between creditor and principal increasing the surety's potential risk releases him. *Holme* v. *Brunskill*, 3 Q. B. D. 495. Appeal bonds are conditional upon reversal or payment. It has been held that an affirmance by consent increases the risk by destroying the surety's chance for reversal and therefore releases him. *Johnson* v. *Flint*, 34 Ala. 673. But some courts argue that the surety is nevertheless bound because the principal in agreeing to affirmance acts within his authority. *Bailey* v. *Rosenthal*, 56 Mo. 385; *Howell* v. *Alma Milling Co.*, 36 Neb. 80; *Drake* v. *Smythe*, 44 Ia. 410; *Thomas Motor Branch Co.* v. *United States Fidelity & Guaranty Co.*, 153 N. Y. App. Div. 32. Moreover, the principal could have defaulted on appeal without releasing the surety. *Cf. Share* v. *Hunt*, 9 Serg. & R. (Pa.) 404. And an affirmance by consent has been considered equivalent in substance to default. *Ammons* v. *Whitehead*, 31 Miss. 99. These arguments forget that it is the creditor's conduct and not the principal's, in agreeing to the affirmance, that is to be considered, since the equitable defense of variation of risk rests upon the creditor's duty to the surety. But contrary decisions releasing the surety overlook the difference between the two conditions of the bond. The creditor owes the surety an equitable duty not to interfere with payment. *Leonard* v. *Village of Gibson*, 6 Ill. App. 503; *Ross* v. *Ferris*, 18 Hun (N. Y.) 210. But he owes no such duty as to reversal. His avowed purpose is, indeed, to prevent reversal, and securing an affirmance by any lawful means should not release the surety. *Chase* v. *Beraud*, 29 Cal. 138. Some courts, however, hold that an affirmance by consent is never within the contemplation of the bond. *Large* v. *Steer*, 121 Pa. St. 30, 15 Atl. 490. *Cf. Baker* v. *Frellsen*, 32 La. Ann. 822; *Foo Long* v. *American Surety Co.*, 146 N. Y. 251, 40 N. E. 730.

TRADE MARKS AND TRADE NAMES — EQUITABLE PROTECTION OF A TRADE NAME WHERE NO ACTUAL COMPETITION. — The plaintiffs had developed a nation-wide business in milk products, such as condensed milk, malted milk, and cream, under the trade name "Borden." A manufacturer of ice cream organized the defendant company with a nominal incorporator by the name of Borden, presumably for the sole purpose of enabling the ice cream to be sold under the name "Borden." The plaintiffs, who had hitherto sold an ice cream only for use in hospitals, brought a bill in equity to enjoin the deceptive use of the trade name, alleging that they were about to put a commercial ice cream on the market. *Held*, that no injunction should be granted. *Borden's Condensed Milk Co.* v. *Borden's Ice Cream Co.*, 45 Chic. Leg. N. 121 (C. C. A., Seventh Circ.). See NOTES, p. 442.

BOOK REVIEWS.

THE DISTINCTIONS AND ANOMALIES ARISING OUT OF THE EQUITABLE DOCTRINE OF THE LEGAL ESTATE. By R. M. P. Willoughby. Cambridge, England: The University Press. 1912. pp. xx, 118.

Too much should not be expected of a doctor's dissertation, which as such may be highly creditable to its author and yet not all that might be desired as a discussion of the subject chosen. Thus, the present example is excellently written, contains many acute and valuable observations, such for instance as the suggestion that in modern judicial applications of the doctrine of tacking we may "detect a note rather of triumph than of surrender — the triumph of art, not the surrender of justice to the binding force of unfortunate precedent"